"In summary trials under this Chapter

(iii) "The officer conducting the prosecution shall have the right of reply on the whole case when the accused has adduced evidence"

If no evidence is led for the defence, the prosecution does not have a right of reply on the whole case.

If a point of law is taken by the defence, in my opinion, it is open to the Magistrate to ask the prosecuting officer to argue the point, but he must give the defence an opportunity of replying to the arguments of the prosecuting officer.

In summary trials where evidence is not adduced by the accused, the last word is always with the defence.

Order accordingly.

[APPELLATE CIVIL JURISDICTION]

MUDIE, J.

September 29, 1933.

HAJI AHMAD BIN IMAM AGONG..Appellant

v.

PUTEH BINTI HAJI AHMAD.....Respondent

[PERAK MAGISTRATE'S CIVIL APPEAL No. 32 of 1933]

Contract to repay money—Subsequent agreement for discharge by performance in a different matter—Accord without satisfaction—Validity of the original contract.

Where parties agree that a contract shall be satisfied in a manner other than that originally agreed on, there is no novation while the satisfaction agreed on remains executory. The original contract remains enforceable.

Haji Abdul Wahab for Appellant.

Sinha for Respondent.

MUDIE, J—This is a claim for $500/-, money lent to the defendant. The defendant promised to pay it back in seven months, but failed to do so. The matter was settled on the defendant agreeing to transfer her half share in a piece of land to the plaintiff. She has failed to transfer the land in fulfilment of the agreement. The plaintiff sued her in the Magistrate's Court for the $500/-. The suit was dismissed on the ground that the agreement to repay the loan was discharged by the agreement to transfer the land. The plaintiff now appeals.

I think the learned Magistrate was wrong in holding that the first agreement was discharged by the second. In my opinion there was no novation, and section 62 of the Contract Enactment is inapplicable.

The new agreement is not by way of substitution for the old agreement. It does not rescind or alter the old agreement. It is an agreement as to the way in which the first agreement is to be satisfied. The first agreement is still in force and if it is not satisfied in the manner provided by the second agreement it can be enforced by action.

There is abundance of authority for the proposition that accord without satisfaction has no legal effect. The original cause of action is not discharged so long as the satisfaction agreed on remains executory.

Counsel for the Respondent argued that the law in India is otherwise and cited *N. M. Firm* v. *Thoperumal Chetty*, (1922) 45 Madras 180. The Calcutta decisions, however, follow the English law. Vide *Manohur* v. *Thakur Das*, (1888) 15 Calcutta 319. This seems to me to be a case where the English decisions apply. In my opinion the first agreement was never discharged. The plaintiff is, therefore, entitled to recover.

The appeal is allowed. Judgment will be entered for the plaintiff for $500 with costs here and below.

Appeal allowed.

[REVISIONAL CIVIL JURISDICTION]

MUDIE, J.

November 17, 1933.

ALANG KANGKONG BIN KULOP BRAHIM... Applicant.

v.

PANDAK BRAHIM BIN MAT ALEH..... Respondent.

[PERAK CIVIL APPLICATION No. 28 of 1933]

[APPLICATION FOR REVISION OF THE MAGISTRATE'S DECISION IN TELUK ANSON CIVIL SUIT No. 290 of 1933]

Contract Enactment, s. 23—Muhammadan Laws Enactment, 1904, s. 8—Marriage brokage—Object opposed to public policy.

A marriage brokage agreement is void as having an object opposed to public policy within the meaning of Section 23 of the Contract Enactment.

This principle applies generally and is unaffected by Section 8 of the Muhammadan Laws Enactment, 1904. *Khem Singh* v. *Anokh Singh*, 7 F.M.S.L.R. 199 followed.

Haji Abdul Wahab for Applicant.

Respondent in person.

MUDIE, J.—This is an application for revision under section 56 of the Courts Enactment, 1918.

The petitioner is the defendant in a suit brought by the plaintiff in the Magistrate's Court for $200 damages for breach of contract. Judgment was given in favour of the plaintiff for $100 and costs.